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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

15 ALMA RAMIREZ, an individual; H.A.,
16 a minor, as successor in interest to
Hector Alvarez, deceased, by and
17 through his guardian *ad litem* Gloria
Menchaca; L.A., a minor, as successor in
18 interest to Hector Alvarez, deceased, by
and through her guardian *ad litem* Gloria
19 Menchaca,

21 Plaintiffs,

22 vs.

24 CITY OF GILROY, ADAM MOON, and
DOES 1 through 10, inclusive,

26 Defendants.

27 CASE NO: 5:17-cv-00625 VKD

28 **UNOPPOSED EX PARTE
APPLICATION FOR APPROVAL
OF COMPROMISE OF THE
CLAIMS OF MINOR PLAINTIFFS
H.A. AND L.A.; VERIFICATION BY
GLORIA MENCHACA**

[Declaration of Renee V. Masongsong
and Exhibits thereto, Proposed Order
filed concurrently herewith]

**TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT Plaintiffs H.A. and L.A., by and through their guardian *ad litem*, Gloria Menchaca, individually and as successors in interest to Hector Alvarez, deceased, hereby move this Court by way of this *Ex Parte* Application for Approval of Compromise of the Claims of Minor Plaintiffs H.A. and L.A. (“Application”) for an order approving the settlement of the minor plaintiffs’ claims and distribution of their settlement funds.

Plaintiffs and their guardian *ad litem*, Petitioner Gloria Menchaca, make this Application pursuant to Northern District Local Rule 7-10. The grounds for this Application are set forth in the Memorandum of Points and Authorities, which follows below, and the Declaration of Renee V. Masongsong (“Masongsong Decl.”), which is submitted concurrently herewith. Prior to filing this Application, Plaintiffs’ counsel Renee V. Masongsong contacted Defendants’ counsel in compliance with Local Rule 7-19 through 7-19.1. Defendants’ counsel is:

Noah Blechman, Esq.
McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP
3480 Buskirk Avenue, Suite 250
Pleasant Hill, California 94523
Tel: (925) 939-5330 | Fax: (925) 939-0203
E-Mail: noah.blechman@mcnamaralaw.com

Masongsong Decl. at ¶ 2.

Defendants and their counsel do not oppose the filing of this Application on an *ex parte* basis, nor do Defendants and their counsel oppose the substance of this Application. Masongsong Decl. at ¶ 3. This Application seeks approval of the compromise of Plaintiffs H.A.’s and L.A.’s (“the Minor Plaintiffs”) claims on an *ex parte* basis because their guardian *ad litem*, after consulting with an annuity broker, vetting insurance companies, and reviewing proposed annuity plans, has chosen an annuity the interest rate for which is likely to expire if this petition is heard as a

1 regularly-noticed motion. Masongsong Decl. at ¶ 4. Filing this Application as a
2 regularly-noticed motion may cause a decrease in payment benefits to the Minor
3 Plaintiffs. *Id.* Accordingly, Petitioner Gloria Menchaca and the Minor Plaintiffs
4 respectfully request that this Court consider this Application on an *ex parte* basis.
5 *Id.*

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8 DATED: October 8, 2020

LAW OFFICES OF DALE K. GALIPO

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Dale K. Galipo
Renee V. Masongsong
Attorneys for Plaintiffs
H.A., L.A. and Alma Ramirez

**UNOPPOSED EX PARTE APPLICATION FOR APPROVAL OF
COMPROMISE OF THE CLAIMS OF THE MINOR PLAINTIFFS**

I. INTRODUCTION

4 Plaintiffs H.A. and L.A., by and through their guardian *ad litem*, Gloria
5 Menchaca, individually and as successors in interest to Hector Alvarez, deceased,
6 (“the Minor Plaintiffs”) hereby submit this *ex parte* application and proposed order
7 for approval of the compromise of the claims of the Minor Plaintiffs (“Application”),
8 and request that this Honorable Court approve of the proposed distribution of the
9 Minor Plaintiffs’ funds.

10 The instant claims of the Minor Plaintiffs arose out of the fatal shooting of
11 Hector Alvarez (“the decedent”) on December 14, 2015, by police officers working
12 for the City of Gilroy’s Police Department. The Minor Plaintiffs are the decedent’s
13 biological children and successors in interest. In addition to the Minor Plaintiffs, the
14 decedent’s mother, Alma Ramirez is also a plaintiff in this action. The parties filed
15 a notice of conditional settlement with this Court (Dkt. #126) on July 7, 2020.

16 The settlement agreement obligates Defendant City of Gilroy to pay to
17 Plaintiffs and their attorneys of record the total sum of \$1,000,000. Plaintiffs
18 propose that it be divided as follows:

19	H.A. and his attorneys	\$ 333,333.33
20	L.A. and her attorneys	\$ 333,333.33
21	Alma Ramirez and her attorneys	\$ 333,333.33

22 | Masongsong Decl. at ¶ 3

II. DISCUSSION

24 District courts have a special duty, derived from Federal Rule of Civil
25 Procedure 17(c), to safeguard the interests of litigants who are minors. Rule 17(c)
26 provides, in relevant part, that a district court must appoint a guardian *ad litem*—or
27 issue another appropriate order—to protect a minor or incompetent person who is
28 unrepresented in an action.” Fed. R. Civ. P. 17(c). In the context of proposed

1 settlements in suits involving minor plaintiffs, this special duty requires a district
 2 “court [to] conduct its own inquiry to determine whether the settlement serves the
 3 best interests of the minor.” *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir.
 4 1978); *see also Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983)
 5 (holding that “a court must independently investigate and evaluate any compromise
 6 or settlement of a minor’s claims to assure itself that the minor’s interests are
 7 protected, even if the settlement has been recommended or negotiated by the
 8 minor’s parent or guardian ad litem.”).

9 Although the district court has a special duty to safeguard the interests
 10 of minor plaintiffs, that duty requires only that the district court
 11 determine whether the net amount distributed to each minor plaintiff in
 12 the proposed settlement is fair and reasonable, without regard to the
 13 proportion of the total settlement value designated for adult co-Plaintiffs
 14 and contracted by them with Plaintiffs’ counsel. If the net recovery of
 each minor plaintiff under the proposed settlement is fair and reasonable,
 the district court should approve the settlement as proposed.

15 *Robidoux v. Rosengren*, 638 F.3d 1177, 1179 (9th Cir. 2011).

16 California Code of Civil Procedure Section 372 and California Rules of
 17 Court, Rule 3.1384 refer to the requirement of court approval and incorporate other
 18 rules requiring disclosure of various pertinent facts. California Rule of Court, rule
 19 3.1384 provides that “[a] petition for court approval of a compromise or covenant
 20 not to sue under Code of Civil Procedure Section 372 must comply with rules 7.950,
 21 7.951, and 7.952.” Pursuant to the above California rules, the Minor Plaintiffs and
 22 their attorneys make the following disclosures:

23 1. The Petitioner is Gloria Menchaca, guardian *ad litem* for the Minor
 24 Plaintiffs. The Minor Plaintiffs and Alma Ramirez are represented by the Law
 25 Offices of Dale K. Galipo and Morales & Leanos.

26 2. Plaintiff H.A. is male. He was born in 2016. Plaintiff H.A. is the
 27 biological son of the decedent in this case, Hector Alvarez.

1 3. Plaintiff L.A. is female. She was born in 2015. Plaintiff L.A. is the
 2 biological daughter of the decedent.

3 4. The nature of the Minor Plaintiffs' claims in this lawsuit is set forth in
 4 the operative complaint filed in this action. Pursuant to the settlement agreement,
 5 the Minor Plaintiffs' claims will be compromised without a trial on the merits.
 6 Masongsong Decl. at ¶ 6.

7 5. the Minor Plaintiffs' damages in this case arise from (1) the injuries
 8 suffered by the decedent, for which Plaintiffs H.A. and L.A. can recover damages as
 9 a successor in interest; and (2) Plaintiffs H.A.'s and L.A.'s individual loss of the
 10 decedent's comfort, care, companionship, training, support, and guidance.
 11 Masongsong Decl. at ¶ 7.

12 6. Medical treatment and medical billing are not relevant. Plaintiffs H.A.
 13 and L.A. have not received medical treatment in connection with this case.

14 7. The total amount of the settlement that Defendant agrees to pay is
 15 \$1,000,000. As set forth above, the Minor Plaintiffs and Alma Ramirez will each
 16 take 33.33% of the \$1,000,000 gross settlement amount. In other words,
 17 \$333,333.33 is proposed to be distributed to H.A. and his attorneys; \$ 333,333.33 is
 18 proposed to be distributed to L.A. and her attorneys; \$ 333,333.33 is proposed to be
 19 distributed to Alma Ramirez and her attorneys. Plaintiffs' attorneys are requesting
 20 attorneys' fees in the amount of 40 percent of the \$1,000,000 in gross settlement
 21 proceeds. The attorneys' fees will be split between the Law Offices of Dale K.
 22 Galipo and Morales & Leanos. Masongsong Decl. at ¶ 8.

23 8. The contingency retainer agreements between Plaintiffs and their
 24 respective attorneys provide for a 40 percent contingency fee. The attorneys' fees
 25 will be borne by Plaintiffs on a pro rata basis with their gross settlement allocation,
 26 such that Plaintiffs' attorneys are requesting \$133,333.33 in attorneys' fees from the
 27 gross settlement proceeds allocated to H.A.; \$133,333.33 in attorneys' fees from the
 28 gross settlement proceeds allocated to L.A.; \$133,333.33 in attorneys' fees from the

1 gross settlement proceeds allocated to Alma Ramirez. In other words, Plaintiffs'
 2 attorneys (the Law Offices of Dale K. Galipo and Morales & Leanos) expect to
 3 receive a combined total of \$400,000 in attorneys' fees. Masongsong Decl. at ¶ 9.

4 9. Plaintiffs' attorneys are also requesting reimbursement of advanced
 5 litigation costs in the total amount of \$26,707.46. The costs will be borne by the
 6 Plaintiffs on a pro rata basis with their gross settlement allocation, such that
 7 Plaintiffs' attorneys are requesting \$8,902.49 in costs from the gross settlement
 8 proceeds allocated to H.A., \$8,902.49 in costs from the gross settlement proceeds
 9 allocated to L.A., and \$8,902.49 in costs from the gross settlement proceeds
 10 allocated to Alma Ramirez. Masongsong Decl. at ¶ 10.

11 10. Under the existing retainer agreements, Plaintiffs' attorneys are due a
 12 40 percent attorney recovery fee, plus reimbursement of advanced litigation costs.
 13 This case involved a substantial amount of risk and time. Moreover, if Plaintiffs had
 14 prevailed at trial, then Plaintiffs' counsel would also have been entitled to
 15 significant statutory attorneys' fees. If Plaintiffs' attorneys were not awarded a
 16 significant compensatory fee in such cases, the attorneys would not be able to take
 17 such cases. In turn, plaintiffs such as H.A. and L.A. would not be able to attract
 18 competent counsel who could achieve similar results. Accordingly, Plaintiffs and
 19 their attorneys submit that Plaintiffs' attorneys are deserving of the requested 40
 20 percent attorney recovery fee in this case. Masongsong Decl. at ¶ 11.

21 11. As stated above, the gross amount of the settlement is \$1,000,000. The
 22 share of these proceeds apportioned for minor Plaintiff H.A. and his attorneys is
 23 \$333,333.33. After deducting requested attorneys' fees of \$133,333.33 and costs in
 24 the amount of \$8,902.49, the total net settlement proceeds to H.A. is \$191,097.51.
 25 Based on the same calculations, the total net settlement proceeds to L.A. and Alma
 26 Ramirez is also \$191,097.51. Masongsong Decl. at ¶ 12.

27 12. It is requested that \$191,097.51 be used to fund a structured settlement
 28 annuity for H.A. Attached hereto "Exhibit A" is a proposed structured settlement

1 annuity for H.A., which is incorporated herein by reference. The total amount that
 2 H.A. will receive after the final payment is made from the annuity is \$280,775.
 3 H.A.'s guardian *ad litem*, Gloria Menchaca, has reviewed the proposed annuity for
 4 H.A. in "Exhibit A" and believes the proposal is in the best interest of H.A.
 5 Masongsong Decl. at ¶ 13.

6 13. It is requested that \$191,097.51 be used to fund a structured settlement
 7 annuity for L.A. Attached hereto "Exhibit B" is a proposed structured settlement
 8 annuity for L.A., which is incorporated herein by reference. The total amount that
 9 L.A. will receive after the final payment is made from the annuity is \$272,785.
 10 L.A.'s guardian *ad litem*, Gloria Menchaca, has reviewed the proposed annuity for
 11 L.A. in "Exhibit B" and believes the proposal is in the best interest of L.A.
 12 Masongsong Decl. at ¶ 14.

13 14. The moving guardian *ad litem* Gloria Menchaca has no claims against
 14 Defendants in connection with the subject incident. Masongsong Decl. at ¶ 15.

15 15. The moving guardian *ad litem* Gloria Menchaca does not have any
 16 claims against Plaintiffs H.A. or L.A. in connection with the subject incident.
 17 Masongsong Decl. at ¶ 16.

18 16. California Welfare and Institutions Code Section 14124.73 does not
 19 apply. Masongsong Decl. at ¶ 17.

20 17. This motion does not seek an order for payment of money to a special
 21 needs trust. Masongsong Decl. at ¶ 18.

22 **Disclosures pursuant to California Rule of Court 7.951:**

23 1. This petition was prepared by attorney Renee V. Masongsong
 24 (California State Bar Number 281819), of the Law Offices of Dale K. Galipo,
 25 located at 21800 Burbank Boulevard, Suite 310, Woodland Hills, California, which
 26 represents Plaintiffs H.A., L.A., and Alma Ramirez in this action. Masongsong
 27 Decl. at ¶ 19.

1 2. Plaintiffs H.A.'s and L.A.'s attorneys (the Law Offices of Dale K.
 2 Galipo and Morales & Leanos) did not become concerned with this matter at the
 3 instance of any party against whom the claim of said minor is asserted.
 4 Masongsong Decl. at ¶ 20.

5 3. Plaintiffs H.A.'s and L.A.'s attorneys (the Law Offices of Dale K.
 6 Galipo and Morales & Leanos) are not employed by any other party or any
 7 insurance carrier involved in the matter. Masongsong Decl. at ¶ 21.

8 4. Plaintiffs H.A.'s and L.A.'s attorneys (the Law Offices of Dale K.
 9 Galipo) have not to date received any compensation for their services in connection
 10 herewith from any person. Masongsong Decl. at ¶ 22.

11 5. H.A., L.A., and Alma Ramirez are the only Plaintiffs in the above-
 12 referenced action. Plaintiffs' attorneys together (the Law Offices of Dale K. Galipo
 13 and Morales & Leanos) expect to receive \$400,000 in attorneys' fees as explained
 14 above in this petition. Plaintiffs' attorneys do not expect to receive additional
 15 compensation for their services in connection herewith. Masongsong Decl. at ¶ 23.

16 6. Plaintiffs' attorneys accepted this engagement for a contingency fee,
 17 plus reimbursement for any costs advanced. The retainer agreement provides for a
 18 40 percent attorney fee if any recovery is made on the case. Masongsong Decl. at ¶
 19 24.

20 **Petitioners' endorsement:**

21 Petitioner has made a careful and diligent inquiry and investigation to
 22 ascertain the facts relating to the incident giving rise to the Minor Plaintiffs' claims,
 23 the parties responsible for the incident, and the nature, extent and seriousness of the
 24 Minor Plaintiffs' claims. Petitioner further understands that if the compromise
 25 proposed in this petition is approved by the Court and is consummated, Plaintiffs
 26 H.A. and L.A. will be forever barred from seeking any further recovery of
 27 compensation even though the Minor Plaintiffs' injuries and losses might in the
 28 future appear to be more serious than they are now thought to be. Petitioner Ms.

1 Menchaca is informed and believes that Plaintiffs H.A. and L.A. have made
 2 sufficient recovery from the effects of their injuries and losses so as to justify the
 3 resolution of this matter in accordance with the terms of the settlement agreement.
 4 Petitioner recommends the compromise and the proposed distribution to Plaintiffs
 5 H.A. and L.A. to the Court as being fair, reasonable, and in the best interest of the
 6 Minor Plaintiffs and requests that the Court approve this compromise settlement and
 7 make such other and further orders as may be just and reasonable. Accordingly,
 8 Petitioner Ms. Menchaca, guardian *ad litem* for minor Plaintiffs H.A. and L.A.,
 9 requests that this Honorable Court enter the proposed annuities attached to the
 10 Declaration of Renee V. Masongsong as "Exhibit A" and "Exhibit B" for Plaintiffs
 11 H.A. and L.A., respectively.

12 **III. CONCLUSION**

13 For the reasons above, Petitioner Gloria Menchaca on behalf of the Minor
 14 Plaintiffs H.A. and L.A. respectfully submit that this Court should enter the
 15 proposed order submitted concurrently herewith.

16

17 Respectfully submitted,

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19 DATED: October 8, 2020

LAW OFFICES OF DALE K. GALIPO

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21

22 /s/ Renee V. Masongsong

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Dale K. Galipo
 24 Renee V. Masongsong
 25 *Attorneys for Plaintiffs,
 H.A., L.A., and Alma Ramirez*

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VERIFICATION BY MINOR'S GUARDIAN

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed on this 6 day of October, 2020, at San Jose, California.

John M. L.

Gloria Menchaca